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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,361	06/05/2002	Yoram Alroy	ALROY=2	8129

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EXAMINER

MULLEN, KRISTEN DROESCH

ART UNIT PAPER NUMBER

3766

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/069,361

Applicant(s)

ALROY, YORAM

Examiner

Kristen Mullen

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/17/06 (Response).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16, 17, 29, 30 and 32-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16, 17, 53, 54 and 56-62 is/are allowed.
- 6) ☒ Claim(s) 34, 35 and 42-52 is/are rejected.
- 7) ☒ Claim(s) 29, 30, 32, 33, 36-41 and 55 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plurality of electrode arrays must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 29-41 are objected to because of the following informalities: the limitation "the leads V1 and V2" in line 8 lacks antecedent basis.
3. Claim 55 is objected to because of the following informalities: the limitation "said electrode arrays" in line 2 lacks antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 34-35 and 42- 52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of the electrode assembly comprising a plurality of electrode arrays is inaccurate. The specification discloses multiple electrode arrays but each electrode array has its own electrode support. Thus, the multiple electrode arrays are not located on the same electrode support as inferred from claims 34 and 42.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 42-43, 45-47 and 49-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller (3,409,007) in view of Cudahy et al. (5,184,620). Fuller shows an electrode assembly comprising: a thin, flexible electrode support that is foldable into a compact unit prior to or after use (it is made of resilient elastic cloth and the wire conductors and electrodes can be removed from the electrode assembly), said electrode support supporting at least six electrodes (70) wholly constructed on the electrode support in proper mutual spaced relationship for producing electrical contact each with a correct respective area of the patient's chest when electrodes V1 and V2 are substantially symmetrically disposed about his or her vertebrae for producing a 12-lead electrocardiogram when the electrode assembly is placed flat against the patient's chest; and limb electrodes (located on bands 33, 54, 55) fixedly attached at one end thereof to the electrode support and having a second end displaceable from the electrode support for locating proximate a patient's limb (Fig. 1 as annotated in the previous office action; Col. 3, lines 35-54; Col. 4, line 68-Col. 5, line 13; Col. 5, lines 37-59). Although Fuller fails to show a plurality of electrode arrays dimensioned for different sized patients and an ECG lead switching and weighting network, attention is directed to Cudahy who shows a plurality of electrode arrays dimensioned for different sized patients (Fig. 3, dimensioned by way of accordion pleats) and an ECG lead switching and weighting network. Cudahy teaches that the multiple electrode arrays

Art Unit: 3766

and ECG lead switching and weighting network is advantageous for choosing electrodes that provide the most optimal signals (Col. 6, line 46-Col. 7, line 6). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the device of Fuller to include a plurality of electrode arrays dimensioned for different sized patients and an ECG lead switching and weighting network as Cudahy teaches in order to choose electrodes that provide the most optimal signals.

The information listed in the parenthesis has not been considered as a limitation to the claims.

Claim 43 is considered a product-by-process limitation. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). M.P.E.P. 2113.

Claims 45 and 47 are considered to be statements of intended use since there is no additional structure set forth.

Regarding claim 46, Fuller further shows a connector (73) (Fig. 2).

With respect to claims 49-50, Fuller shows an ECG signaling device including a vocalizing unit (Col. 5, line 74-Col. 6 line 5; Col. 2, line 14-33)

8. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller (3,409,007) in view of Cudahy et al. (5,184,620) as applied to claim 50 above. Fuller and

Art Unit: 3766

Cudahy are as explained before. Although Fuller and Cudahy fail to show digital circuitry, the use of digital circuitry in place of analog circuitry is well known in the electrocardiography art. It would have been obvious to one with ordinary skill in the art at the time the invention was made to utilize digital circuitry since it is well known in the electrocardiography art.

Allowable Subject Matter

9. Claims 16-17, 53-54 and 56-62 are allowed.
10. Claims 29-30, 32-33, 36-41, 55 would be allowable if rewritten to overcome the claim objections set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
11. Claims 44, 48 and 52 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen Mullen whose telephone number is (571) 272-4944. The examiner can normally be reached on M-F, 10:30 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3766

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kristen Mullen
Patent Examiner
Art Unit 3766

kdm